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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1941

No. 1235

GOLDEN GATE BRIDGE AND HIGHWAY DISTRICT OF CALIFORNIA (a public corporation of the State of California),
Petitioner and Appellant Below,

vs.

UNITED STATES OF AMERICA,
Respondent and Appellee Below.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The above named petitioner respectfully petitions this Honorable Court for a writ of certiorari to review a decision and judgment of the Circuit Court of Appeals for the Ninth Circuit, entered on the 16th

day of February, 1942, affirming a judgment of the United States District Court in and for the Northern District of California; petition for rehearing in the Ninth Circuit was denied April 10, 1942; the mandate from the Court was stayed, on order of the Court, to and including the 16th day of May, 1942.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

In this, a declaratory action by the government, the issues were submitted on an agreed statement of facts (R. pages 39-48), and an additional stipulation of facts, received by order of Court. (R. pages 34-38.)

The primary question involved is the right of the Secretary of War under the Act of July 5, 1884, in granting a permit to rest bridgeheads on the reservations and a right to construct a highway to the bridge (Title 10, U.S.C.A. page 234, Section 1348), to exact from a public bridge district free tolls in perpetuity over the bridge not only for military and naval forces but for all forms of government traffic, civilian or otherwise, and including every department and every employee of the United States Government.

The second question, probably as important as the first, is whether the phrase "government traffic" inserted in a permit, following and coupled with a provision exacting free tolls for military and naval forces, is to be construed, contrary to accepted canons of construction, to include every employee and department of the United States government in addition to the military and naval traffic.

The Act of July 5, 1884 (Title 10, U.S.C.A. page 232), reads as follows:

> "Section 1348. Roads across and ferry landings on military reservations; driving animals across reservations. The Secretary of War shall have authority, in his discretion, to permit the extension of state, county, and territorial roads across military reservations; to permit the landing of ferries, the erection of bridges thereon; and permit cattle, sheep or other stock animals to be driven across such reservations, whenever in his judgment the same can be done without injury to the reservation or inconvenience to the military forces stationed thereon."

This is the sole charter of authority in the Secretary of War.

The Golden Gate Bridge and Highway District is a public corporation organized under the laws of California, for the purpose of building and operating the greatest bridge in the world to span the tidal waters of the Pacific Ocean at the entrance to San Francisco Bay.

For a mile and a quarter the Golden Gate Bridge is supported above waters wholly within the jurisdiction of the State of California. It is wholly within the boundaries of the State. The bridgeheads rest on soil of military reservations at both ends of the structure. The roads leading to the bridge-ends were constructed across these two military reservations, while the bridge itself is suspended over navigable waters wholly under the jurisdiction of California.

In December, 1924, John W. Weeks, then Secretary of War, indicated to the commercial groups interested in the building of the bridge, that the project would receive favorable consideration by the War Department. (R. pages 50-52.) In this official record the Secretary emphasized that only a military question was involved, otherwise the matter of a permit would have been handled in the routine manner by the Chief of Engineers and Secretary, to insure only against obstruction of navigation.

All objections, he pointed out, would be avoided by the District bearing the expense of moving, replacing, and rebuilding certain obsolete military installations, and bearing all cost of constructing the approaches. Throughout this document nothing but *military* requirements and needs of the *military establishment* were mentioned.

The Golden Gate Bridge and Highway District having been incorporated, submitted the preliminary sketches for the structure and indicated an intention to comply with the requirements as to military installations. All of these requirements were met by the Bridge at a cost to the District of over $750,000.00.

On August 9, 1930, the Chief of Engineers of the United States approved the plans, and on August 11, 1930, Patrick J. Hurley, Secretary of War, approved the same. (R. page 113.) As pointed out by Secretary Weeks, this would have been the only requirement had not a military question been involved.

The Secretary of War having on August 11, 1930, given full approval, without restrictions, to the plans

for the building of the bridge, the Assistant Secretary of War, on October 27, 1930, issued a permit for the extension of roadways across the two military reservations to the bridge-heads. This permit (R. pages 119-126) was limited to the construction of roadways across the reservations, and granted permission to erect and maintain the ends of the bridge on military reservation grounds. The Secretary of War had no authority to grant a permit for the building of the bridge over state waters, except as to the bridgeheads resting on government soil.

Objection having been made by the Bridge District to the language of the original permit for the construction of the bridge, the Secretary of War, on February 13, 1931, issued an amended permit, which is admitted by the government to be controlling in this case. In both the original and amended permits, the Secretary of War certified as follows:

> "Whereas the extension of said roads and the erection of the ends of said Golden Gate Bridge on such reservation may be made as hereinafter provided, without injury to the reservation or inconvenience to the military forces stationed thereon; and there being no military objection thereto."

In drafting this amended permit, the Secretary of War inserted the two paragraphs, which have been from the beginning, the subject of controversy in this action. These paragraphs are numbered respectively Sections 6 and 11a. (R. pages 43-44.) These two sections read as follows:

"6. That civilian employees of the Army and Navy travelling on Government business and under proper military authority, and Government traffic, and all military and naval personnel and their dependents, shall have the use of the bridge and roads free of charge."

"11. That this grant shall not be effective unless and until the State of California shall have made application to Congress for a retrocession of jurisdiction over the rights of way covered by this grant during the life thereof and shall have declared by legislative action that it will accept such retrocession of jurisdiction from the United States, that it will make the bridge and the highways covered by this permit a part of the system of public highways of the State of California, and that it will assume the responsibility for managing, controlling, policing and regulating traffic thereon, all subject to the following limitations and to such other limitations as Congress may prescribe:

"* * * a. All traffic upon said roads and upon said bridge shall be free from any tolls, charges or any form of obstruction by State or other agencies against military and naval personnel and their dependents, civilians of the Army travelling on Government business under military authority and Government traffic."

Under this permit the Golden Gate Bridge was built at a cost of $35,000,000.00, all of which was supplied by private moneys through a bond issue. Neither the United States government, the State of California, nor any governmental agency contributed directly or indirectly anything to the cost of erecting the bridge.

It is stipulated by the government in the record and in the agreed statement of facts (R. pages 34-38), that the erection of the Golden Gate Bridge is of great and lasting benefit to the United States government, and to its military and naval establishments. Specifically, these benefits are stipulated by the government to be five-fold. They are as follows:

First: The bridge fills a gap over an arm of the ocean which separated two military reservations.

Second: Before the erection of the bridge, the only method of transportation across the Golden Gate Strait, separating the reservations, was by a public utility ferry system, which charged tolls in excess of those imposed by the Bridge District when the bridge was opened for traffic. The only other method of transportation for the government was by United States transport which was, of course, dependent upon the presence of a transport, and involved great expense. By these two means only, could troops, munitions and freight be transported, prior to the erection of the bridge.

Third: Since the erection of the bridge, the War Department is able swiftly to transport, from reservation to reservation, troops, trucks, cannon and munitions, and if imposed, the tolls for such transportation would be less than those formerly collected by the public utility. Furthermore, the trip which formerly required forty-five minutes, may now be accomplished in a matter of less than five minutes. These facts are all certified in the stipulation of agreed facts, although the trial Court declined to make any finding on these admitted facts.

Fourth: Two six-lane highways, through both reservations, on which there are no tolls, enable the War Department to move all its shipments with speed.

Fifth: The War Department required that these roadways leading to the bridge be made part of the State highway system, and be policed by and at the expense of the State.

Thus, the barrier of an arm of the Pacific Ocean, which impeded traffic—the passage of which involved enormous expense—was removed; a swift, modern highway was made available to the United States government and its military and naval establishments. In addition, at a cost of three-quarters of a million dollars, the Bridge District revamped the military installations to the point where the Secretary of War certified that there was "no injury to the reservation or inconvenience to the military forces stationed thereon; and there is no military objection thereto".

The bonds of the Golden Gate Bridge and Highway District outstanding, amount to a total of $35,000,000.00. They are a lien upon all the properties of the District; and in the event the revenues of the bridge are not sufficient to pay the interest and the maturing bonds, resort must be had to taxation of the physical properties of all citizens within the District. These bonds are all set forth, with the dates of maturity, in the agreed statement of facts. The government, in the agreed statement of facts, stipulates that the Bridge District is dependent wholly on the revenues of the bridge, in the first instance, to meet its operating expense, maintenance, cost, in-

terest charges, bond redemptions, which for the year 1939-1940 is the sum of $2,038,840.00. It is also stipulated, that since the erection of the bridge, its revenues have been insufficient to meet its expenditures; that in addition to the cost of upkeep, administration, repairs, and interest on bonds, it will be necessary for the Bridge District to set aside moneys as a sinking fund to meet the bonds of the District which commence to mature in 1942. The agreed statement of facts stipulates that unless revenues exceed expenditures, it will be necessary to impose a property tax on the District to meet the deficit in annual revenues.

Military and naval vehicles and traffic having been permitted from the beginning to pass, under a reservation of protest reserved by the bridge, the government sought by this, a declaratory action, to have it decreed that the permit should be construed to give passage free of toll, not only to the military and naval establishments, but to every person in the employ of the United States government, and all departments, civil or otherwise, with their vehicles and traffic.

With the reservation of protest as to military and naval vehicles and traffic, all of which have been permitted to pass toll free, the Bridge District has refused free toll passage to other traffic, on the ground, first, that the Secretary of War had no authority to exact free tolls for all the civilian personnel and departments of the United States, without authority from Congress, and, secondly, that the language of the permit read according to all canons of construction, restricted "government traffic" to traffic of the military and naval forces of the United States.

As an example of the military and naval traffic involved, the agreed statement of facts sets forth that during that portion of the year 1937 from May 28 to December 1937, there passed over the bridge a total of 2,375,541 vehicles; of these, 49,081 were military and naval, passing free of toll. During the year 1938, the free toll vehicles numbered 142,195; during 1939, free toll vehicles reached a total of 185,292. Thus, year by year, the number of government vehicles receiving free passage, has constantly increased. Likewise, the volume of civilian traffic, seeking the right to free tolls, has correspondingly increased.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

(1) The Circuit Court of Appeals by deciding that the Secretary of War, without authority of Congress, under the Act of July 5, 1884, had authority to exact free tolls over the Golden Gate Bridge for all civilian departments and personnel of the United States government, rendered a decision of great general importance affecting adversely practically every public and private bridge district in the United States; the full implications of which may imperil the financial stability of many bridge districts throughout the United States.

(2) The decision of the Ninth Circuit in this case, in holding that the Secretary of War, and not the Congress, under the Act of July 5, 1884, had authority to exact free tolls over a public bridge, to which the government had contributed no funds, and in which the only aid extended was by an easement, of ad-

mitted benefit to the United States government, rendered a decision of great and controlling importance on an important question of federal law, which has not been, but should be, settled by this Court.

(3) The decision of the Ninth Circuit in this case, holding that without authority of Congress, other than the limited discretion committed by the Act of July 5, 1884, the Secretary of War has authority to impose free tolls for the benefit of every civilian department in the United States and the personnel thereof, rendered a decision on a federal question which is in probable conflict with applicable decisions of this Court, of the Second Circuit Court of Appeals, and of the opinions of the Attorney General of the United States.

(4) The decision of the Circuit Court of Appeals by holding that the limited discretion committed to the Secretary of War, in a mere general matter of roads and highways, gives authority to exact free tolls over a bridge spanning State waters, for the benefit of every civilian department of the United States and the personnel thereof so far departs from the accepted and usual course of judicial proceedings, and so far sanctions a departure by a lower Court, as to call for an exercise of this Court's power of supervision.

(5) The decision of the Circuit Court of Appeals in extending the limited discretion committed to the Secretary of War by the Act of July 5, 1884, so as to empower the Secretary of War, without consent of Congress, to exact free tolls for the entire personnel of the United States government, civilian and

otherwise, which decision is contrary to the construction theretofore placed upon that statute by the Attorney General of the United States, and contrary to the construction placed by this Court on similar statutes, involves a construction of the greatest importance on a statute affecting the business world, and the legal profession. Such construction, unless overruled or modified by this Court, may impair the financial integrity of numerous bridge districts, and will discourage, if not prevent, the construction of future projects beneficial to the government, and the people at large. The need of an authoritative and elucidating decision by this Court with respect to the penal exactions of free tolls, applied to the entire government personnel, is imperative.

(6) The decision of the Circuit Court of Appeals, which approves the exaction of free tolls, for the benefit of every department of the United States government and its personnel, is in direct conflict with the decision of the Fifth Circuit Court of Appeals in the case of *Gouax v. Bovay,* 105 Fed. Rep. (2d), page 256, wherein the right of the Secretary of War to impose a condition of free tolls is denied as the taking of property without due process of law.

(7) The decision of the Circuit Court of Appeals holding that under the limited authority conferred by the Act of July 5, 1884, the Secretary of War, without the consent of Congress or authority therefrom, may exact free tolls for all civilian departments and personnel of the United States, is a decision of an important question of local law, probably in conflict with applicable local decisions.

(8) The decision of the Ninth Circuit that the limited discretion conferred on the Secretary of War to permit a road across a military reservation may be extended into a power to impose the exactions of free tolls, over a bridge spanning waters under state jurisdiction, is contrary to the decisions of this Court in *International Bridge v. New York,* 254 U. S. 129; *Lakeshore Railway v. Ohio,* 165 U. S. 366; and is in conflict with the spirit of other decisions of this Court.

(9) The decision of the Ninth Circuit holding, in effect, that the Secretary of War, under the limited special authority conferred by the Act of July 5, 1884, may, without the consent of Congress, be enlarged into a general authority to impose free tolls for all civilian employees of the United States and their traffic, is in direct conflict with the opinions of the Attorneys General of the United States construing the Act of 1884 (30 A. G. Opinions 470-481; 26 A. G. Opinions 81; 21 A. G. Opinions 537-539), and such decision raises a conflict of authority with respect to the construction of a federal law, which will result in confusion and uncertainty, and which should be clarified by the decision of this Court.

(10) The decision of the Ninth Circuit, holding that the phrase "government traffic", a general provision, following specific provision for the free traffic of military and naval personnel, should be construed as giving free traffic to the entire civil personnel of the United States, is in conflict with the decisions of the Ninth Circuit Court of Appeals in *United States v. Columbia River-Longview Bridge Co.,* 99 Fed. (2d) 287; the decision of the Fifth Circuit in

Gouax v. Bovay, 105 Fed. (2d) 256; and the decision of the Court of Claims in *Louisville Bridge Commission v. United States,* 89 Court of Claims, page 493; and the decision in *United States v. Certain Lands in the City of Detroit,* 12 Fed. Supp. 345. Such construction so far departs from the accepted and usual course of judicial proceedings, and the construction of reservations affecting the public, as to call for an exercise of this Court's power of supervision.

(11) The decision of the Ninth Circuit holding that the expression "government traffic", a general phrase, following specific provisions for the traffic of the Army and Navy, is to be construed so as to enlarge the privilege of free tolls to include every civilian department and the personnel of the United States government, is in conflict with every authority on construction rendered by this Court, and other Federal Courts and all State Courts, and constitutes a departure, in the construction of a federal reservation, from all accepted authority. Such decision is of great importance on a question of law affecting all federal reservations of free tolls, and is of great importance to the business world and the legal profession; the need of an authoritative and elucidating decision by this Court is imperative.

(12) The Department of Justice, in the lower Court, admitted the provisions in the permit to be ambiguous, but contended for a wide and sweeping construction. Such construction, approved by the Ninth Circuit, is in conflict with every canon of construction and the universal application of such rules of construction applied by the Courts of the United

States. Such construction is not only violative of all judicial authority; it is unreasonable; and involves the taking of property without the due process of law.

THE QUESTIONS PRESENTED.

The foregoing reasons for the allowance of the writ practically present all of the questions involved on this application; in brief, however, and in different form, they may be summarized as follows:

1. The Secretary of War was given a limited authority by the special statute of July 5, 1884 (Title 10, U.S.C.A. page 232, Section 1348), to permit the extension of roads across military reservations, and to permit the erection of bridges thereon; and to allow livestock to be driven across such reservations whenever, in his judgment, the same could be done without injury to the reservation or inconvenience to the military forces. With this statute, as his only authority, the Secretary of War granted the permit to attach the bridgeheads to the military reservations at each end of the bridge, thus linking the reservations, and to construct a highway leading to the bridge. In granting the permit the Secretary of War imposed an exaction of free tolls over the bridge proper in favor of the military and naval forces, and "government traffic". Did the special Act of July 5, 1884, clothe the Secretary of War, without further action by Congress, and without the consent of Congress, to require that all departments of the United States government, and their personnel, civilian and

otherwise, should have the right in perpetuity, to pass over the bridge?

2. The government having stipulated in the case, (1) that the construction of the Golden Gate Bridge and the highways leading to it, were of great benefit to the federal government and its military and naval establishments, and (2) that the construction of the bridge and highways was without injury to the reservations, and without inconvenience to the military forces, but on the contrary was beneficial to the government, did the power reside in the Secretary of War to impose free tolls in perpetuity in every department of the federal government and their respective personnel?

3. The erection of the Golden Gate Bridge having been stipulated by the government to be of great benefit to the United States and its military and naval forces, and of great convenience in the transportation and movement of its military and naval establishments, and the government having contributed nothing toward the cost of the bridge, was it not the taking of property without due process of law to exact such free tolls, under the holding of the Fifth Circuit in *Gouax v. Bovay,* 105 Fed. (2d) 256?

4. Did not Congress alone have the power to exact free tolls, and did it delegate such power to the Secretary of War by the mere general language of a special statute authorizing permission to build highways?

5. The Secretary of War, having indicated in writing, that the only question to be considered was a military one, and all requirements antecedent to

the permit having been fully complied with, and the Secretary having certified that there was no military objection, and neither injury nor inconvenience, had the Secretary of War any power to impose free tolls for civilian departments of the United States and their personnel?

6. We contend every canon of construction requires that where, in a statute, general words follow a designation of a particular subject or class of persons, the meaning of the general words will be restricted to the particular designation. In the permit in question, the Secretary of War required free tolls for the military and naval forces, and then added "government traffic". Did not the Circuit Court of Appeals violate the established rule of construction and all cases enforcing it, by holding that the language of the permit should be construed to permit free passage of all the traffic of every civilian department of the United States and every employee of the United States?

7. Was the construction of the language of the permit erroneous in not limiting freedom from tolls to the traffic of the Army and Navy, and did not the ruling violate every reasonable ground of construction by extending the free toll privilege to include every department and official of the United States and their respective traffic?

8. The Department of Justice, having at the outset admitted ambiguity in the language of the permit, should that ambiguity be resolved in favor of the government as against all established canons of construction?

9. Did not the doctrines of *Noscitur a Sociis* and of *Reddendo Singula Singulis* require the phrase "government traffic" to be limited to the government traffic of the Army and Naval forces?

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and proceedings of said United States Circuit Court of Appeals had in the case numbered on its docket 9900, Golden Gate Bridge and Highway District of California (a public corporation of the State of California) Appellant v. United States of America, Appellee, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment therein of said United States Circuit Court of Appeals for the Ninth Circuit be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated, San Francisco, California,
May 8, 1942.

GOLDEN GATE BRIDGE AND HIGHWAY DISTRICT OF CALIFORNIA (a Public Corporation),
Petitioner,

By JOHN L. MCNAB,
Counsel for Petitioner.